

NO. 42342-1-II

IN THE COURT OF APPEALS, STATE OF WASHINGTON
DIVISION II

HAIGEUN JUNG and HYOSUN JUNG,

Respondents,

v.

SANG TAE YOON and HYUN SUK YOON,

Appellants.

On Appeal from the Pierce County Superior Court
Cause No. 09-2-07785-7
The Honorable Judge Katherine M. Stolz

APPELLANTS' BRIEF

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ASSIGNMENT OF ERROR

The trial court erred in entering its order of June 10, 2011, denying Appellants' Motion for a New Trial.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Respondents filed a complaint against Appellants for defamation. The parties were all South Korean immigrants, with Appellants having a very limited English speaking ability. Respondents were represented by an attorney at trial. Appellants did not have an attorney and conducted the four day trial in Pierce County Superior Court pro se.

The trial court permitted diversions, hearsay, leading questions, lack of personal knowledge in testimony, contradictory rulings, improper evidence, non-relevant testimony, and confusion about the issues, parties and testimony, which the court subsequently applied, in addition to a lack of legal proof of damages, to its decision in favor of Respondents.

Appellants moved for a new trial, which was denied by the trial court.

Was the trial court's denial of Appellants' Motion for a New Trial error, in that Appellants did not receive a fair trial?

STATEMENT OF THE CASE

Substantive Pretrial Facts

Respondents and Appellants are all South Korean immigrants who resided in Pierce County, attended the same church, and had known each other for some time. .

On April 10, 2009. Respondents filed a complaint for defamation against Appellants, claiming that on March 18, 2009 Appellant Hyun Suk Yoon (“Mrs. Yoon”) came to a grocery store Respondents owned and talked to Respondent Haigeun Jung (“Mr. Jung”), telling him that his wife, Respondent Hyoson Jung (“Mrs. Jung”), was having an affair with a third-party, rented a room with that individual and committed fornication. The allegation also stated Mrs. Yoon told Mr. Jung that Mrs. Jung slept with others for money and that Mrs. Jung had gone to Korea to obtain an abortion after being impregnated by one of her lovers. *CP 3-5*

The allegation also stated that Mrs. Yoon came to the Respondents’ home to continue the defamatory statements, and then left to repeat the same statements to “many different individuals” who were friends of Respondents, including members of their church. *CP 3-5*

Respondents alleged the defamatory statements were untrue and that Mrs. Jung suffered emotional damages and financial damages as a

result. Respondents alleged that the defamatory statements were continuing. *CP 3-5*

On April 27, 2009, acting pro se, Appellants responded and denied the allegations, and stated that the sole purpose of Mrs. Yoon meeting with Mr. Jung was to inform him that Mrs. Yoon had heard the statements against Mrs. Jung, and was providing Mr. Jung that information. *CP 9-10*

Respondents' counsel subsequently provided a witness list, identifying, besides Respondents and Appellants, a total of seven lay witnesses and three expert medical witnesses. *CP 6-8*

Trial Court Proceedings

The case went to a bench trial before the Honorable Katherine M. Stolz on March 21, 2011. The parties had three separate interpreters to interpret for both sides. Appellants had previously retained an attorney, but that attorney withdrew long before the trial, leaving Appellants without counsel and without any knowledge of how a trial is conducted, the presentation of evidence or how evidentiary and testimonial rules were to be applied.

Mr. Jung testified that Mrs. Yoon came to his store on March 18, 2009, claiming that Mrs. Jung was having an affair with "some men," that she was loaning money and suing those who did not repay her, and that she had a baby with someone else. *RP March 21, 2009, page 9*

Mr. Jung stated that Mrs. Yoon was at the store for two hours and told him many rumors (*RP March 21, 2009, page 10*), but he did not elaborate what those were. Mr. Jung stated he was shocked and did not believe the story. *RP March 21, 2009, pages 11-12* He also stated that he continued to have faith in his wife. *RP March 21, 2009, page 12*

Mr. Jung testified that he had no problem with the statement as it related to his relationship with his wife, and that he never even mentioned it to her until he came home that evening. *RP March 21, 2009, page 13* Mr. Jung testified that he knew his wife never had an affair, he never suspected her of having an affair, and he never felt she got pregnant. *RP March 21, 2009, pages 13-14*

Mr. Jung did not testify about any statement, rumor, or defamatory remark made by Mrs. Yoon to any other third-party. He did state that he stopped going to his church where Appellants were members in 2009 because they did not like their church members, that the other members were not happy and blamed other people. *RP March 21, 2009, page 15*

Mr. Jung never testified in his initial direct testimony that he left the church for any conduct committed by Appellants. However, Respondents' counsel was permitted to repeatedly re-ask questions regarding the reason for Respondents leaving their church. *RP March 21, 2009, page 15* Given that opportunity to change his testimony, Mr Jung

only stated that Mrs. Yoon had tried to come by their home, they did not like it, and that is why they moved. *RP March 21, 2009, pages 15-16*

The trial court permitted the same question to be asked and answered repeatedly, in an obvious effort to solicit a different response. Appellants were pro se, but the court did not, on its own, intervene. Continuing questions persisted on the same subject. *RP March 21, 2009, page 16*

Mr Jung was asked whether Mrs. Yoon had told others what she had told Mr. Jung. Mr. Jung's response was "*I heard something, that Mrs. Yoon told the ladies, women church member, told her (sic) about the stories, same story to the other people.*" *RP March 21, 2009, page 17*

This hearsay statement was allowed to be admitted, where Mr. Jung is claiming that he heard something from church members that Mrs. Yoon had told the same story. *RP March 21, 2009, page 17* The source was never identified, and the statement was never supported by any witness called by Respondents.

Under cross-examination by Appellant Sang Tae Yoon ("Mr. Yoon"), Mr. Jung testified that he believed that the rumors were started by Mrs. Yoon, who told other church members. *RP March 21, 2009, pages 24-25* Again, no factual basis presented for that opinion, and not a single witness to verify that speculative statement.

During the course of the trial, Respondents only called two non-party witnesses. The first was Shinok Chong, who had some undisclosed employment responsibility at Christian Family Care. Ms. Chong was never listed as a witness on Respondents' witness list. *CP 6-8* She testified that she was familiar with two medical records of her employer (*RP March 21, 2009, pages 31-32*), that there was a doctor Lee, who worked at the clinic, and that the records identified as Exhibits 15 and 16 were dated May 11, 2009 and May 27, 2009. *RP March 21, 2009, page 32*

Mr. Chong was not identified as a record keeper, yet she was permitted to identify medical documents and have them authenticated as medical records. *RP March 21, 2009, page 32* Mr. Yoon attempted to cross examine the witness on the relationship of the documents to the Appellants; however, the court interrupted Mr. Yoon and informed him that the witness was the custodian of the records, kept in the ordinary course of business, that they went to the issue of stress suffered by Mrs. Yoon, and were admissible. *RP March 21, 2009, page 33* That misstatement by the court was repeated and effectively cut off Mr. Yoon's proper inquiry. *RP March 21, 2009, pages 33-34*

There was no testimony as to who prepared the records, the specific purpose behind the preparation, the nature of the complaint (assuming stress), and what if anything was reported to have triggered

these two visits to the clinic, which occurred two months after the alleged defamation.

The only other non-party witness was Chung Dong, who testified that he knew Respondents and Appellants from the church they attended. *RP March 21, 2009, page 35* Mr. Dong's initial testimony was that Mr. Yoon stopped by Mr. Dong's business at some unknown date, possibly May or June 2009. *RP March 21, 2009, page 36* Mr. Dong stated that Mr. Yoon told him a story about Mrs. Yoon being a hooker, having an affair with some other person, getting pregnant, and leaving to Korea to obtain an abortion. *RP March 21, 2009, page 37*

Mr. Dong's testimony about the alleged statement was not in the allegations of Respondents' complaint. *CP 3-5* Despite that, Mr. Dong was permitted to continue, despite the fact that the complaint only mentioned a statement made by Mrs. Yoon.

When Mr. Dong was asked if he believed that story, he first said he did not care about it. *RP March 21, 2009, page 38* He never testified that he believed it or accepted the statement as either true or harmful to Mrs. Jung's reputation. What he did state was that he had heard the statement through the "vine" (grapevine) from someone "*probably at the church, some people talking about that.*" *RP March 21, 2009, page 39* Mr. Dong

also stated that he did not pay attention to the statements. *RP March 21, 2009, page 39*

When pressed about whether he heard these statements from other people, Mr. Dong repeated that he heard it through the grapevine. *RP March 21, 2009, page 39* He subsequently stated “[W]hat I heard is the average church members know about that story. That’s what I heard.” *RP March 21, 2009, page 39* Mr. Dong also testified that he had heard the statement from his wife.

Mr. Dong admitted that he had heard the rumors about Mrs. Jung from his wife, who heard it from someone in the church, before Mr. Yoon related the information to him. When Respondents’ counsel asked if the rumor originated from Appellants, Mr. Dong stated he did not know. *RP March 21, 2009, pages 51-52*

When the trial recessed the first day, after the testimony from Mr. Dong, he was called back the second day and Respondent’s counsel was permitted to ask the same question again regarding the statements made by Mr. Yoon. This time, Mr. Dong stated, after being led into the response, that he asked Mr. Yoon why Mr. Yoon was saying these things. Mr. Dong said he specifically asked Mr. Yoon “*So why do you make some kind of gossip and tell church members something like that; so if I remember, she (sic) mentioned I don’t like church; I don’t like the people, then, I do want*

I want to. That's why he tell about Mrs. Jung discussion to church members." RP March 22, 2009, pages 6-7

Even though the response was incoherent, it clearly was a change in testimony from the first day to the next. He was contradictory, and this new day testimony contained information that Mr. Dong did not originally testify about. Respondents' counsel was permitted numerous repetitive questions on that subject. *RP March 22, 2009, pages 6-7*

The previous day, the trial court had allowed Mr. Dong to go off the subject of the complaint, with testimony by Mr. Dong that he had written a letter in Korean to church members on behalf of the church, asking Appellants not to attend any more church services because they "threatened" other church members. *RP March 21, 2009, pages 39-44*

The letter was translated by two interpreters orally and the contents had no relation whatsoever to the allegations of Respondents in their complaint against Appellants.

Respondents' counsel was permitted unhindered to go into unrelated areas for what appeared to be efforts to improperly castigate and prejudice the character and reputation of Appellants. Mr. Dong testified that the letter involved two separate couples, including Appellants, and the reason for asking both not to stay in church was because the two couples

were believed to have made efforts to harm some church members over their immigration status. *RP March 21, 2009, page 42*

Respondents' attorney was permitted to revisit Mr. Dong's original statements about the visit with Mr. Yoon, and this time he stated that Mr. Yoon came to see him because Mr. Yoon wanted to close the church and did not want Mr. Dong to interfere. *RP March 21, 2009, page 43*

Along with this second and completely different statement as to the purpose of Mr. Yoon's visit, Mr. Dong was permitted to testify, with sheer speculation, that church members were missing from the Respondents' case in court because they were afraid. *RP March 21, 2009, page 44*

When asked whether he had personal knowledge as to whether Appellants threatened the church members not to come to court, Mr. Dong stated he did not know. *RP March 21, 2009, page 44* The question was allowed to be asked again, and Mr. Dong gave the same response. *RP March 21, 2009, page 44*

Respondents' counsel asked Mr. Dong how the letter that was just testified to referred to the allegations in the complaint. Mr. Dong testified that the letter only dealt with threats but did not discuss the rumors. *RP March 21, 2009, pages 45-46* The court permitted Respondents' counsel to ask the same question again, stating whether the letter was written because Mr. Dong wanted Appellants to stop spreading bad rumors. Mr.

Dong changed his testimony, given this opportunity, and said that that was correct. *RP March 21, 2009, page 46*

That letter, referred to in Exhibit 7, was objected to by Mr. Yoon, who claimed that he never received the letter. The Court never replied to Mr. Yoon, but just admitted Exhibit 7 into evidence before it was even translated. *RP March 21, 2009, page 47* Subsequently, when the letter was read in English, it never referred to the issues in Respondents' complaint. *RP March 21, 2009, pages 48-49* Nevertheless, the court continued to allow it into evidence.

Respondents' counsel asked Mr. Dong if he had sent the letter to Appellants by certified mail. *RP March 21, 2009, pages 47, 49-50* Mr. Dong repeatedly insisted that he had done so, and the trial court requested the receipt be produced. Both Mr. Dong and Respondents' counsel promised to produce that receipt, claiming they had it, but later admitting they did not. *RP March 22, 2009, pages 12, 14* Despite that failure, the letter was still admitted.

Mr. Dong was permitted to continue his testimony on non-related issues, including an allegation that he received a threatening phone call from Mrs. Yoon for which he was forced to call 911 and make a police report. He said he received a case number from the police. *RP March 21, 2009, pages 50-51* As with the certified receipt, Mr. Dong could not

produce the case number. When Mr. Yoon made an effort to ask for that case number, the court admonished him. *RP March 22, 2009, pages 17-18* Even though the telephone conversation was irrelevant, the court permitted testimony about it, so it was proper cross-examination to ask for the case number.

The trial court even allowed Respondents' counsel to ask Mr. Dong about the reactions of Respondents to the gossip. Even the trial court asked those questions. *RP March 22, 2009, page 7* Mr. Dong replied that he talked with Mrs. Jung and she was crying. *RP March 22, 2009, page 8* He further testified, without foundation, about the effect of this type of rumor on Korean families generally. *RP March 22, 2009, pages 7-8* Mr. Dong did not state when he had this conversation, what the circumstances were, or what knowledge he might have that would qualify him to give personal opinions on what other Korean families might think.

Mr. Dong was further allowed to testify about other church members, including one who had two children and a husband in Korea. *RP March 22, 2009, pages 9-10*

Mrs. Jung testified that the first time she heard these stories about her was on March 18, 2009, at 3:20 p.m. *RP March 22, 2009, page 34* This statement contradicted the testimony of Mr. Jung, who said he waited until that evening when he went home to tell her.

When Mrs. Jung was asked what Mr. Jung told her, Mrs. Jung testified that he told her that he heard Mrs. Jung had an affair with different men, became pregnant, went to Korea and had an abortion, returned and rented an apartment and took money from men who would sleep with her. She also testified that her husband told her that he heard that they were in the process of a dissolution and the family would be broken by the divorce. *RP March 22, 2009, page 34*

That recollection was different than the testimony that Mr. Jung gave in direct. Mr. Jung never testified that Mrs. Jung was renting an apartment and he never mentioned anything about a dissolution, or the family breaking up. Further, Mrs. Jung testified that her husband only told her that this was what he heard from "someone." *RP March 22, 2009, pages 34-35* Mrs. Jung changed her testimony on cross-examination and testified that her husband told her that the statement was made by Mrs. Yoon. *RP March 23, 2009, page 26*

On the issue of damages, Mrs. Jung testified that two months after the incident, in May 2009, she went to see a family doctor and a psychologist, for which she had counseling for one year at the Asian Counseling Center. *RP March 22, 2009, page 36* She identified a Dr. Lee as someone she saw at the Christian Family Care before she saw a psychologist.

No testimonial medical evidence of Mrs. Jung's visits to Asian Counseling Center was ever provided in trial. only some exhibits which never were identified by any medical authority or provider, except for Ms. Chong, who earlier allegedly identified Exhibit 15 and 16.

Mrs. Jung testified that she went to a psychiatrist, a Dr. Suh. *RP March 22, 2009, pages 37-38* There was no independent testimony that Dr. Suh was a psychiatrist or a psychologist. Mrs. Jung could not recall the names of her medications, saying only that she did not want to remember them. *RP March 22, 2009, page 38* There was no independent testimony on what reason or other motivation Mrs. Jung had for seeing a psychologist or psychiatrist.

Mrs. Jung testified that she was referred to Asian Counseling Center after four months from the alleged statement by Mrs. Yoon. Respondents' counsel was permitted to produce Exhibit 17, a list of prescription medications, to refresh her memory. Through her interpreter, Mrs. Yoon objected on admissibility, but the court overruled that objection even though there had been no testimony by the prescribing physician that the medication being testified about was related causally to the alleged defamation damages. *RP March 22, 2009, pages 40, 43* The court was aware that Mrs. Yoon was pro se, but refused to intervene on an objection

to the admissibility unless Mrs. Yoon couched the objection in a legal manner. *RP March 22, 2009, pages 40, 43*

Mrs. Jung was permitted to continue with hearsay about with Dr. Suh said. *RP March 22, 2009, pages 43-44* She gave testimony that she had shock and stress problems, and was being treated at the Asian Counseling Center by at least four counselors. *RP March 22, 2009, pages 43-44* Mrs. Jung did not produce any testimonial evidence from providers regarding notes, charts, records, or other medical testimonial evidence to sustain her statements.

Instead, Respondents' counsel marked Exhibits 11 through 14, which were alleged documents which had not been identified by those who created them, to help Mrs. Jung answer the dates and the counselors she saw on those dates. *RP March 22, 2009, pages 45-46* The trial court inquired over any objection to admission, which Appellants replied they did not have. *RP March 22, 2009, page 46* The court knew that there had been no testimony identifying the documents by the end of trial, but they were still admitted into the record.

Mrs. Jung also testified that she had continuing symptoms of vomiting, stress and other factors. But there was no medical corroboration that it was related to her defamation claim. *RP March 22, 2009, pages 46-48*

Respondents' counsel returned to Exhibit 15, and read Christian Family Care notes into the record. *RP March 22, 2009, pages 48-49* When Mrs. Jung again said she could not recall medications, Respondents' counsel was allowed to recall them by name to the witness. *RP March 22, 2009, page 49* There never was any nexus between these drugs and the symptoms allegedly related to the alleged defamation.

Respondents' counsel continued to read medical records into the record, including those from Dr. Suh. The trial court stopped him and stated that they (Exhibit 17) had already been admitted. *RP March 22, 2009, page 49* Mrs. Jung testified that she would have "*this disease or this symptom until I die.*" *RP March 22, 2009, page 49* There was no corroborating testimony by any witness of any disease, or that any symptom complained of was related to the allegedly defamation, or even existed.

Mrs. Jung testified that she had a fear of going to the Korean markets and Korean churches because she was afraid of the rumors. *RP March 22, 2009, page 57* However, not once in any of the testimony presented by Plaintiffs did anyone testify that they were aware of any rumor about Mrs. Jung except Mr. Dong.

Despite the fact Mr. Jung testified he knew the alleged statement was not true, when Plaintiffs' counsel asked if Mrs. Jung's husband treated her

differently, Mrs. Jung gave a vague answer about living through an invisible line and wall. *RP March 22, 2009, pages 60-61*

Then, when asked if she had changed, Mrs. Jung resorted to hearsay by testifying about what her children were saying about her and how other people looked at her. *RP March 22, 2009, page 63*

Plaintiffs called Mr. and Mrs. Yoon as their fifth and sixth witnesses. Both denied any defamation statements or rumors, including Mrs. Yoon going to the store to make these alleged statements to Mr. Jung.

Mrs. Yoon testified that she opposed abortion and was angry and upset that the pastor and his wife opposed the tenets or doctrines of the church by supporting abortion. *RP March 23, 2009, pages 39, 41* The trial judge asked on her own whether Mrs. Yoon was testifying that she went to Mr. Jung's store to discuss those church issues. Mrs. Yoon testified that that was the reason. *RP March 23, 2009, page 49*

Because the court allowed the subject matter of the trial to go so far off course, even the trial judge was getting confused. On the third day of trial, the court admonished Mrs. Yoon for not asking a question. The court then stated, "*I think because we heard the husband's testimony, we have all established that, first of all, your **husband** went with another man to the grocery store, and she was not there; and he went home and told her what the allegations were.*" *RP March 23, 2009, page 27* The Court

continued "...when you're saying 'I went to the grocery store, you're talking about when your **husband** went to the grocery store?'" *RP March 23, 2009, page 27*

Mr. Yoon never went to the grocery store, there was no testimony about another man he was with, but the general confusion continued.

Mrs. Yoon asked the Court "*Which husband?*" The Court then stated "*Your **husband**.*" Mrs. Yoon then stated, "*No. My husband has never been there.*" The Court then replied "*All right. The testimony yesterday...that your **husband**---went to the grocery store with another man and told him what the allegations were regarding the Plaintiff's wife, that is, the Jungs; and there certainly wasn't any question on cross examination which said that that wasn't true; and then on the following day, the testimony has been that you went to the Jungs home.*" *RP March 23, 2009, pages 27-28*

The court even became upset with Mrs. Yoon, stating that Mr. Jung testified that it was Mrs. Yoon husband, Mr. Yoon, who came to the store. The court stated "*You're the one who has confused everybody by saying 'I came to the store.'*" This statement by the court was incorrect, and even when Respondents' counsel attempted to correct the court, the trial judge stated, "*that wasn't the testimony of Mr. Chung (sic).*" *RP March 23, 2009, page 29*

The trial continued in that confusing matter, with both Appellants denying any statement of defamation, but being highly restricted by the court due to their inability to conduct a proper examination or present a proper case. The result was a ruling that Appellants knowingly made false, inflammatory and vicious statements about Mrs. Jung. *RP March 24, 2009, page 54*

The court also found that the church Board of Directors was appalled by Appellants conduct in harassing Respondents, and tied it to Mrs. Yoon's "spree" of attacking other members of the church. *RP March 24, 2009, pages 54-55* The court found that this "vendetta" was the reason why by Mrs. Yoon went to see Mr. Jung and say the defamatory statements. *RP March 24, 2009, page 55*

The court ruled that Mrs. Jung was distressed and saw treatment by her physician, a psychologist, and counseling service. *RP March 24, 2009, page 56* The court went further and determined that due to cultural differences, Mrs. Jung was sensitive than someone raised in mainstream America, and as a result of the "defamatory campaign" by Mrs. Yoon, Mrs. Jung suffered "serious depression." *RP March 24, 2009, page 56*

The court then found that Mrs. Yoon was "a liar," so that it might alleviate some of the damage done to Mrs. Jung among her formal church members, and then awarded her \$75,000 in general damages. *RP March*

24, 2009, page 59 The trial court also awarded attorney fees. *RP March 24, 2009, page 60*

The court also awarded \$56,400.00 because Respondents had to pay additional rent when it determined that Respondents moved as a result of the defamation. *RP March 24, 2009, pages 55-56, 58*

SUMMARY OF ARGUMENT

This case was filed as a defamation case, specifying one act of defamation which was alleged to have occurred on March 18, 2009 by Mrs. Yoon in a conversation with Mr. Jung. The complaint also stated generally that others were told the same thing by Mrs. Jung. Mrs. Jung alleged that she suffered physical and emotional injury as result of defamation.

At no time during the trial did Mrs. Jung ever prove, with testimony or exhibits, those symptoms she began to complain of two months after the alleged conversation between her husband and Mrs. Yoon had anything to do with that conversation or its contents. Mrs. Jung made self-serving statements of harm, but despite allegedly seeing multiple doctors, counselors, and psychologists, not one was produced.

The court admitted improperly medical records, charts, medicine summaries, and other medical evidence without foundation or a relation of such to the alleged defamatory statements.

Despite the fact that Appellants were pro se and did not have the knowledge to object, the trial court should never have allowed the hearsay, irrelevancy, and unidentified exhibits to be admitted into evidence, upon which the court made its decision in favor of Respondents.

ARGUMENT

The trial court allowed the case and the facts to become convoluted, confusing, and to swing into areas completely unrelated to the single issue of defamation and the damages which flowed therefrom.

There was no testimony of reputation damage beyond the testimony of Mrs. Jung. There were no medical experts for any emotional damage. There was confusion about the purposes and intent of letters and personality that had nothing to do with the defamation issue that came before this court, and led greatly to the onset of confusion so that by the third day, even the court could not keep track of who did what.

Documents of medical and psychological harm were admitted without foundation or authenticity or with causation as to the alleged injury and the nature of the defamation. It is not enough to list medical

records and the medical personnel who are going to testify, and then only admit the medical documents without the doctors and experts, or treatment providers.

Significantly, the trial court in its ruling never mentioned the testimony of Mr. Dong or any bad act on the part of Mr. Yoon. The complaint did not mention Mr. Yoon, and the entire testimony of Mr. Dong as it related to Mr. Yoon was disregarded with respect to defamation. The only thing the court concentrated on was the fact the letter by Mr. Dong proved that there was a concern among church members, which the court concluded extended to the alleged statements by Mrs. Yoon to Mr. Jung.

This case was about defamation, not an allegation of false light. Defamation is concerned with compensating an injured party for damages to that person's reputation. *Eastwood v. Cascade Broad. Co.*, 106 Wash.2d 466, 471, 722 P.2d 1295 (1986). Defamation requires a Plaintiff to prove falsity, unprivileged communication, fault and damages. *Mohr v. Grant* 153 Wash.2d 812, 822, 108 P.3d 768 (2005).

Further, since the Plaintiffs argued in their complaint that Mrs. Jung was a public figure, they are required to prove that the Defendants made the defamatory statement with actual malice. *Herron v. KING Broad. Co.*,

109 Wash.2d 514, 523, 746 P.2d 295 (1987). Actual malice is knowledge of or reckless disregard for the falsity of the statement. *Id*

On the other hand, false light is different from defamation in that it focuses on compensation for mental suffering, rather than reputation. *Eastwood, supra*, 106 Wash.2d at 471, 722 P.2d 1295. A false light claim arises when “someone publicizes a matter that places another in a false light if (a) the false light would be highly offense to a reasonable person and (b) the actor knew off or recklessly disregarded the falsity of the publication and the false light in which the other would be placed.” *Id.* at 470-71, 722 P.2 1295.

This was a defamation case, requiring a showing of reputation damage as one of the essential elements. At the conclusion of Plaintiffs’ case, there was no such showing. The standard of proof if this is not a public figure case is that of negligence by a preponderance of the evidence. If a public figure, it must be proven to be “actual malice” by clear and convincing evidence. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974); *Moe v. Wise*, 97 Wash. App. 950, 957, 989 P.2d 1148 (1999).

In order to reach that burden of proof, whether individual or public figure, there must be a showing of damages. Damages cannot be simply self-serving. They must be proven with the same burden of proof that the

other three elements of defamation require. In other words, there has to be something beyond the complaining witness' own testimony that two months after the event she went to a Christian Family Care office, then a doctor, and then another doctor, and then an Asian Counseling Service. She has to prove that that there was a nexus between the alleged defamation, the visits to medical providers, and the injury described.

Further, there has to be more than the wisp of suspicion that other people know about these rumors or statements, and that Plaintiff is avoiding her community, her church, and her market place for fear that some or all of the people are staring at her with knowledge of the rumor.

That is all Plaintiffs case consisted of. Taking all of the evidence together, the evidence is insufficient to support a claim of defamation, certainly under the fourth element. There has to be some publication which leads to reputation damage. Mr. Jung did not believe the statements and did not condemn his wife. Mr. Dong did not believe the statements, and did not testify to any reputation lost in his mind. All the rest of the testimony by Mr. Dong and Mrs. Jung was fog, asserting some knowledge by unknown people.

Damages, once proven, then must be assessed for what are considered as the proven, actual harm caused to the reputation of the person defamed for emotional distress and bodily harm that is proved to

have been caused by the defamatory publication. Restatement (Second) of Torts, section 558 (1977). Further, under the Restatement, there must be a causal link existing between the element of falsity and the element of damages.

As to special damages relating to the “rent” that the court determined came to \$56,400.00, the calculation was completely off and never explained.

When the Court inquired as to the mortgage on Respondents’ home where they originally lived, the answer was \$1,900 per month. *RP March 22, 2009, page 58* When asked what the rent was that the Jungs had to pay in their new home in Bellevue, the answer was \$1,750. *RP March 22, 2009, page 56* That is only a difference of \$250 a month. In addition, Mrs. Jung testified that she only had a vacancy for four months in her home. That came to \$7,600. Therefore, the actual damages of rent, if such a claim is to be allowed, would be \$7,600, plus \$250 a month from April 2009 to March 2011, a total of 23 months, for a monetary total of \$5,750. That brings a total of \$13,350. Yet, in calculating the damage claim this Court made an award of \$56,400 for the rent expenses. *RP March 22, 2009, pages 56, 58*

CONCLUSION

Appellants respectfully request this court to order a new trial for the factual and legal reasons specified above.

DATED this 16th day of February, 2012.

LAW OFFICES OF LESLIE CLAY TERRY, III



LESLIE CLAY TERRY, III- WSBA No. 8593
Attorney for Appellants

DECLARATION OF SERVICE

I, Leslie Clay Terry, III, declare and say as follows:

1. I am a citizen of the United States and resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and am competent to be a witness herein.

2. On February 16, 2012, I served the following document on the individual named below, in the specific manner indicated:

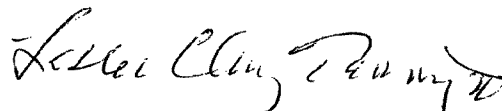
1. Appellants' Brief

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Attorney for Respondents	<input type="checkbox"/> Other

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 16th day of February, 2012, at Bellevue, Washington.



Leslie Clay Terry, III

TERRY LAW OFFICE

February 16, 2012 - 4:06 PM

Transmittal Letter

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Case Name: Sang Tae Yoon and Hyun Suk Yoon, Appellants v. Haigeun Jung and Hyosun Jung, Respondents.

Court of Appeals Case Number: 42342-1

Is this a Personal Restraint Petition? Yes ☐ No ☒

The document being Filed is:

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Sender Name: Leslie C Terry III - Email: info@clayterrylaw.com

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